IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 534 OF 2007

Bon Limited)
Haji Bunder, Sewri,)
Mumbai 400 015)...Petitioner

V/s.

1. Hindustan Lever Employees Union,)
   7/17 BDD Chawl, Sewree)
   Mumbai 400 015)

2. Hindustan Lever Limited)
   165/166 Backbay Reclamation)
   Mumbai 400 020)...Respondents

Mr.Mukul Rohtgi, Senior Counsel with Mr.P.K.Rele, Senior Counsel with Mr.R.N. Shah, cousnel with Ms.Rubi Ahuja, Counsel with Mr.Mahesh Londhe i/b. M/s.Sanjay Udeshi & Co. for the Petitioner.

Mr.K.K. Singhvi, Senior Cousnel with Mr.Sanjay Singhvi, Ms.Jane Cox and Mr.B. D'Costa, Advocates for the Respondent No.1.

WITH

WRIT PETITION (LODGING) NO. 474 OF 2007

Hindustan Lever Limited)
165/166 Backbay Reclamation)
Mumbai 400 020)...Petitioner

V/s.

1. Hindustan Lever Employees Union,)
   7/17 BDD Chawl, Sewree)
   Mumbai 400 015)

2. Bon Limited)
   Haji Bunder, Sewri,)
   Mumbai 400 015)...Respondents

Mr.C.U. Singh, Senior Counsel with Mr.R.M. Pethe for the Petitioner.

Mr.K.K. Singhvi, Senior Cousnel with Mr.Sanjay Singhvi, Ms.Jane Cox and Mr.B. D'Costa, Advocates for the Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : MARCH 29, 2007

ORAL JUDGMENT :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent.

2. Both these petitioners are challenging the order passed by the Tribunal holding that the reference which is made by the Government is maintainable. Brief facts which are relevant for the purpose of deciding these petitions are as under :-

3. The petitioner in Writ Petition (Lodging) No.474/2007 transferred its company to the petitioner in Writ Petition No.534/2007 Bon factory, Mumbai, by a deed of transfer and in the terms of settlement which was arrived between the parties, it was agreed that the workmen who were working with Hindustan Lever Ltd. in the said factory would be given an option to join services of Bon Limited. Pursuant to the said option

which is given, all the workmen except 47 workmen had given their option and were transferred to the company Bon Limited with effect from 17.7.2005.

4. Thereafter, the petitioner company Bon Limited made an application to the Competent Authority under Section 25-O of the Act seeking permission to close down the Bombay factory. This application was rejected by the Competent Authority on 16.3.2006. Thereafter, the petitioner company made an application for review of the said order as per provisions of Section 25-O(5). The Competent Authority allowed the review application and granted permission to the company for closure of its industrial establishment i.e. Bombay factory situated at Haji Bunder Road, Sewri, Mumbai. Thereafter, on 27.7.2006, the workmen of Bon Limited filed an application before the Competent Authority seeking a reference of the matter concerning the closure of its unit. Thereafter, the Union addressed a letter to the appropriate Government and the Competent Authority and made a prayer for reference. In the meantime, the Union representing the workmen challenged the order of closure and also the order dated 26.7.2006 by the appropriate authority and filed the writ petition vide Writ Petition

No.2056/2006.

5. In the said writ petition, this Court passed an order directing the Competent Authority to refer the matter to the Industrial Tribunal for adjudication under Section 10(1) read with Section 25-O(5) of the Act. The learned Single Judge of this Court also granted liberty to the petitioner company to challenge the maintainability of the reference which was in the Industrial Court.

6. Pursuant to the order passed by this Court in the aforesaid writ petition, the appropriate Government made a reference and referred the matter to the Tribunal.

7. The petitioner company challenged this order which was passed by this Court in SLP No.1566/2006 before the Apex Court. The Hon'ble Supreme Court was pleased to dispose of the SLP with the following directions :-

> "We make it clear that the Tribunal should decide the question as to whether the reference

> is maintainable in the first instance as a preliminary issue preferably on or before 31st January, 2007."

8. Thereafter both the parties filed their respective submissions and after hearing both the sides, Tribunal by order dated 25.1.2007 held that the reference was maintainable. The petitioner in Writ Petition No.534/2007 is challenging the said order of the Tribunal dated 25.1.2007 wherein it was held that the reference is maintainable. The petitioner Hindustan Lever Ltd. in Writ Petition (Lodging) No.474/2007 has filed this petition seeking a direction from this Court directing the Tribunal to consider its application for withdrawal of the notice which was issued to the petitioner Hindustan Lever Ltd. and also deletion of Hindustan Lever Ltd. from array of parties as it was not proper and necessary party since Bombay factory had already been transferred to Bon Limited.

9. The learned Counsel for the petitioner has submitted the petitioner raises several important questions of law by general public importance. He submitted that this issue which was sought to be raised by the petitioner was not decided by the Division Bench

of this Court in the case of **Cable Corporation of India Vs. Additional Commissioner of Labour & Ors. reported in 2005 II CLR 1033.** He submitted that while exercising the powers of Section 25-O(5), the Competent Authority did not have the power to refer the matter to a Tribunal after it had already taken a decision in review while exercising its power under Sub-clause 5 of Section 25-O. He submitted that in the present case, initially the appropriate Government had by passing the reasoned order refused to grant permission to the petitioner while exercising its power vested in it by Sub-clause 2 of Section 25-O and that thereafter when a review application was filed under Sub-clause 5, the review application was allowed. He submitted conjoint reading of Section 25-O and more particularly, sub-clause 5, it was apparent that appropriate Government had a discretion either to review its own order or to refer the matter to the Tribunal for adjudication and that it would not exercise this discretion after it had exercised the said discretion and reviewed the order. He submitted that having reviewed the order, the order had attained finality which was clearly stipulated in Sub-clause 4 of Section 25-O and therefore, had become final and binding. He submitted that once the order had

become final and binding on all the parties, there was no question of again making a reference to the Tribunal. He submitted that the Division bench of this Court on which reliance was placed by the Tribunal while holding that the reference was maintainable, also had not taken into consideration this aspect which has been argued by him today. He invited my attention to the Judgment of this Court in the case of **Cable Corporation (supra) reported in 2005 2 CLR 1033** and more particularly, paragraph 10 of the said judgment which reads as under :-

> The scope of review is not spelt out in the Section. Though in a review the appropriate Government will have to make an inquiry into all necessary facts, particularly into the genuineness and adequacy of the reasons stated by the employer, workmen and all interested persons, nevertheless the scope of review is limited to the question whether the order under review was correctly passed. An adjudication, on the other hand would require the tribunal to assess the genuineness of the evidence before it and on the material placed before it, it would arrive on a preponderance of probabilities to a conclusion whether the permission ought to be granted or not. The Tribunal when conferred with the power of adjudication in terms of sub-section (6) is not trimmed by the limitation as contained in sub-section (2). It has to answer the reference made to it and the reference made to it cannot be limited to the question whether the permission granted by the appropriate Government is good or bad.

> Therefore, the application under sub-section (2) for retrenchment itself comes under the scrutiny of the Tribunal (See Britania Industries Limited v. Maharashtra General Kamgar Union and Anr., 2005 I CLR 278 and Voltas Employees Union v. Voltas Limited and Ors., 2002 II CLR 140). The intention of the Parliament in making the aforesaid provision in sub-section (6) is to provide adjudication forum to the applicant who is aggrieved by the refusal or grant of permission for retrenchment. If we accept the submission of Mr. Singhvi that the two remedies in the said section are alternative to each other, it will result in a situation wherein the forum of adjudication will be denied to the party on the Government's rejecting the review and confirming its order. It is also seen that the right to apply for the review is restricted not only to the employer or workmen but also is retained by the Government itself. Accepting Mr.Singhvi's interpretation would mean that if Government reviews its order on its own motion the aggrieved party would not be able to prefer either of the remedies provided under sub-section (6). The section, therefore, will have to be harmoniously construed and it would be necessary to read into sub-section that this review will necessarily mean taking another view or alternate view of the matter on merits. In case the authority declines to accept the review for want of new or additional material, sub-section provides for the aggrieved party the adjudication forum by way of reference to the industrial tribunal. Any other interpretation will make the remedy otiose.

10. He further submitted that the judgment on which reliance was placed by the Division Bench of this Court on the judgment of the Apex Court also did not consider this aspect and therefore, the Tribunal had clearly erred in relying on the judgment of the Division Bench

of this Court while holding that the reference is maintainable.

11. He also invited my attention to the order passed by the Apex Court in the SLP which was filed by M/s.Bon Limited against the order of the learned Single Judge of this Court dated 22.8.2006 and 29.8.2006. The Apex Court has passed the following order :-

> "Heard learned senior counsel appearing on behalf of both sides.
>
> We have perused the orders dt.22.08.2006 and 29.08.2006. In the order dt.29.08.2006, the learned Judge had made the observation that the Tribunal is competent to decide the question as to whether the reference is maintainable, in the first instance. Learned Judge has further clarified that if the first respondent is aggrieved by the order of the Tribunal, the first respondent shall be at liberty to pursue the remedies that are available in law.
>
> We make it clear that the Tribunal should decide the question as to whether the reference is maintainable in the first instance as a preliminary issue preferably on or before 31st of January, 2007. We clarify the two orders only to the above extent. The Special Leave Petition is disposed of accordingly."

12. He submitted that the order which was passed in the case of **Cable Corporation** also was challenged by the

said company in the Supreme Court and the said SLP filed by **Cable Corporation** is still pending and the following order was passed in the said case :-

> "The matter is fixed for hearing on 2nd December, 2005 on the top of the final disposal matters.
>
> The Award which may be passed by the Industrial Tribunal pursuant to the directions of the High Court shall not be given effect to without further orders of this Court."

13. The learned Senior Counsel further submitted that in the said pending writ petition, an application was made for intervention by the petitioner-Bon Limited.

14. The learned Counsel for the petitioner Hindustan Lever Ltd. submitted that he adopted the arguments made by the learned Counsel for the petitioner and invited my attention to Rule 28 of the High Court Original Side Rules and discretion vested in the said Rule that if the learned Single Judge while hearing the matter felt that the matter should be properly adjudicated by the Division Bench, then he would place the matter before the Hon’ble Chief Justice so that the Chief Justice would take appropriate decision. He also submitted that

judgment in the case of **Britannia Limited** in which reference has been made by Division Bench of this Court in **Cable Corporation** case has been set aside.

15. Shri K.K. Singhvi, learned Counsel for the respondent submitted that the Division Bench of this Court in a case of **Cable Corporation (supra)** has considered all the aspects which has been argued by the learned Counsel for the petitioner and submitted that the Tribunal clearly held that the judgment was binding on the Tribunal and also this Court. He submitted that the Division Bench judgment in the case of **Cable Corporation (supra)** is pending in the Supreme Court and in fact, the petitioner company M/s.Bon Limited had directly filed the SLP in the Supreme Court on the ground that since the SLP in the case of **Cable Corporation (supra)** pending in the Supreme Court, were approached the Supreme Court directly and the said SLP is also pending in the Supreme Court. He submitted that as long as this question is being considered by the Apex Court, there was no reason to interfere with the order passed by the Tribunal. He further submitted that Rule 28 of the Original Side Rules was not applicable to the facts and circumstances of the present case.

16. I have heard the learned Senior Counsel Mr. Mukul Rohtgi appearing on behalf of the petitioner and the learned Senior Counsel Mr. K.K. Singhvi appearing on behalf of the Respondents.

17. In my view the question which is raised by the learned Counsel appearing on behalf of the Petitioner is squarely covered by the judgment of the Division Bench of this Court in the case of Cable Corporation of India (supra) and the said judgment, therefore, is clearly binding on this Court. Apart from that, the said judgment is also challenged before the Apex Court and the Petitioners have also filed an SLP on the same issue and the same is pending in the Apex Court and, therefore, in any case, the issue will be finally decided by the Apex Court in the said SLP. Apart from the submission which is made by the learned Senior Counsel appearing on behalf of the Petitioner which is recorded in para 9 of this judgment, the following questions have been raised in this Petition which are as under:-

(a) Whether while exercising powers

under Section 25-O(5) of The Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), it is obligatory on the part of the Appropriate Government/Specified Authority, as the case may be, to refer the matter for adjudication to the Industrial Tribunal after the Review Application has been allowed by a reasoned order?

(b) Whether the word "or" appearing in Section 25-0(5) [after the words sub-section (2)] of the Act can be read as "and" in spite of the plain and unambiguous language of the statute?

(c) Whether Section 10 of the Act provides for reference of certain disputes in an existing industry alone and not in industries that have already been closed?

(d) Whether a challenge to the permission granted to close would

qualify as an "industrial dispute" as defined in Section 2(k) of the Act after an industrial undertaking has been closed as there exists no employer/employee relationship between the claimants and the erstwhile management?

(e) Whether the appropriate Government/Specified Authority erred in referring the application filed for closure under Section 10 read with Section 25-0 of the Act to the Industrial Tribunal completely ignoring the proceedings held before it and the orders passed by it allowing the closure application which attained finality?

(f) Whether a reasonable discretion vested in the Appropriate Government/Specified authority, if any, can be completely taken away by judicial interpretation of an unequivocal statutory provision?

(g) Whether the Industrial Tribunal can proceed further with the adjudication of Reference based on its Part-I Award, before it becomes enforceable as per section 17-A of Industrial Disputes Act 1947?

Since it is contended by the learned Counsel appearing on behalf of the Petitioner that the judgment in the case of Cable Corporation of India (supra) does not deal with the issue which is raised in this Petition, it will be necessary to take into consideration the facts in the said case and the ratio of the said judgment. In the case of Cable Corporation of India (supra), the scope and ambit of section 25-N(2) fell for consideration. The question which fell for consideration before the Division Bench was, whether, after rejection of the review application by the appropriate Government, the State Government was precluded from making reference for adjudication under section 25-N(6) of the Act. The facts of the said case were as under.

. Cable Corporation of India (hereinafter referred

to as "the said appellant - company") was established in 1957 for the manufacture of high voltage electric cables and wires. One of its manufacturing units was situated at Borivli. The said appellant - company made an application under section 25-N(2) to the specified authority on 16/01/2003 to retrench 290 workmen out of 509 workmen working at its Borivli Unit. An inquiry was made and after hearing both sides, the specified authority allowed the application preferred by the said appellant - company and granted permission to retrench 276 workmen. The workers' Union filed applications under section 25-N(6) for review of the decision or for reference as contemplated under the said provision. The said applications preferred by the Union were rejected on the ground that such applications could be preferred only by the workman and, therefore, the applications for review/reference were rejected. This order was challenged by filing a Writ Petition and it was partly allowed by the learned Single Judge vide order dated 2.8.2004. The learned Single Judge held that the finding of the specified authority that the Union had no locus as all the aggrieved workmen were not made parties to the application was contrary to law laid down by the Supreme Court in The Mumbai Kamgar Sabha, Bombay V. M/s

Abdulbhai Faizullabha and Ors. reported in 1976 SC 1455. The learned Single Judge relied upon the judgment of Division Bench of Gujarat High Court in Rajya General Kamgar Mandal and Ors. V. Vice President, Packart Press Div Ambalal Sarabhai Enterprises, Baroda and Ors. reported in 1995 II CLR 613 and further held that merely because review application is rejected, reference cannot be said to be barred under section 25-N(6) of the Act. It was contended on behalf of the said appellant - company that sub-section (6) of section 25-N provided an option of approaching the appropriate authority to either review its order or to refer the matter to the Tribunal for adjudication and it was contended on behalf of the company that the reference was not in the alternative to review and, therefore, once the review application was rejected the party had no right to a reference. It was contended on behalf of the appellant - company that the Union having exercised their option seeking review of the order dated 29/04/2003 before the specified authority and the said review application having been rejected, the question of thereafter making a reference to the Tribunal would not arise and, therefore, the order of the learned Single Judge directing reference was contrary to the plain language

of section 25-N(6) of the Act. On the other hand, it was argued on behalf of the Union that though the legislation has used the words "may review or refer the matter to the Industrial Tribunal for adjudication" in the context of Chapter V-B of the Act, the word "may" will have to be read as "shall" and, therefore, it was submitted on behalf of the Union that even if the review applications were rejected, the specified authority had no other option but to refer the matter for adjudication before the Tribunal. In the light of the said controversy, the Division Bench of this court examined the said issue and after taking into consideration the judgment of the Supreme Court in the case of Excel Wear etc. V. Union of India and ors. reported in 1978 II LLJ 527 and also the judgment in the case of the Meenakshi Mills Ltd. etc. V. Meenakshi Mills Ltd. and anr etc., reported in AIR 1994 SC 2696 and in the case of M/s Orissa Textile and Steel Limited V. State of Orissa and ors. reported in 2002 I CLR 831 SC, held that rejection of the review would not bar the remedy of having the matter referred to the Tribunal for adjudication.

18. It has to be noted here that the wording used in

section 25-N(5) & (6) is identical to the words used in section 25-0 sub-clause (4) & (5).

19. In the present case also, it has been urged on behalf of the learned Senior Counsel appearing on behalf of the Petitioner that the finality attached to the order passed by the specified authority under sub-clause (4) of section 25-0 would become redundant if it is held that after the review application is decided by the appropriate Government still the appropriate Government has jurisdiction to refer the matter to the Tribunal for adjudication. It is submitted that in view of the finality which is given to the order passed by the appropriate Government as is found in sub-clause (4), there was no question of again vesting a discretion in the appropriate Government to refer the matter for adjudication by an independent Tribunal. It is, therefore, contended that the provisions of section 25-0(4) & (5) had to be read together and if so read, it would be clear that the review having been decided by the appropriate authority which was essentially a quasi judicial in nature, only option which was left for the aggrieved party was to file a Writ Petition under Article 226 of the Constitution of India.

20. In my view, though the question which fell for consideration before the Division Bench was completely identical to the question which is raised by the learned Senior Counsel appearing on behalf of the Petitioner, yet, considering the arguments which were advanced on behalf of the Company and the workmen which are reproduced in para 5 of the said judgment of the Division Bench, this particular argument is covered by the ratio of the judgment delivered by the Division Bench in the Cable Corporation of India (supra). The judgment of the Division Bench is binding on this Court. Judicial propriety demands that a Single Judge of this Court has to follow the ratio laid down by the Division Bench of the same Court. Apart from that, even otherwise, the order passed by the learned Single Judge of this Court dated 22/08/2006 and 29/08/2006 in Writ Petition No.2056 of 2006 has been challenged by the Petitioner in the Supreme Court and the SLP is still pending alongwith the SLP filed by the Cable Corporation of India, challenging the judgment passed by the Division Bench of this Court. In view of this fact also, I do not see any reason to interfere with the impugned order passed by the Tribunal.

21. Further, in my view, a direction will have to be given to the Tribunal to decide the reference, as expeditiously as possible and in any case, within a period of three months. It must be mentioned here that the case of the petitioner is that Bon Limited has already closed down its Bombay factory. Looking at the provisions of Section 25-O, it is apparent that balance will have to be maintained in a dispute between the conflicting interests of workers of the company and the company having its own reasons for seeking closure of the company. Section 25-O Sub-clause 5 also clearly stipulates a reference if made should be decided within a period of 30 days. Proviso clearly contemplates that any reference which is made has to be expeditiously disposed of. That appears to be the intention of the legislature which is clearly reflected from the proviso of Sub-clause 5. Keeping in view the statutory provision which is reflected from the said proviso, I direct the Tribunal to decide the reference as expeditiously as possible and in any case within a period of three months from today.

22. With these directions, Writ Petition No.534/2007

is disposed of.

23. So far as Writ Petition (Lodging) No.474/2007 filed by Hindustan Lever Ltd., a specific application has been filed by them seeking withdrawal of notice which was issued to them and their deletion from the array of the parties. After having perused the impugned order which is passed by the Tribunal, it appears that the Tribunal has not addressed itself on this particular issue and therefore, a direction is sought by the petitioner Hindustan Lever Ltd. that the Tribunal should consider this issue and decide it expeditiously. The Tribunal accordingly is directed to consider and decide the application filed by the petitioner Hindustan Lever Ltd. dated 10.10.2006.

. With these directions, both the writ petitions are disposed of.

(V.M. Kanade, J.)

,